REG. v. CHEW THIA HIANG & ORS.

[A. Cr. J. (Tan Ah Tah J.) November 7, 1957]

[Singapore — Special Case No. 2 of 1957]

Gaming — Public lottery — Whether "characters lottery" is a lottery — Common Gaming Houses Ordinance (Cap. 114) s. 4(c),

This was a case stated by a Magistrate under the provisions of section 306 of the Criminal Procedure Code (Cap. 132). The accused were charged under section 4(c) of the Common Gaming Houses Ordinance with assisting in the carrying on of a public lottery, to wit, the "characters lottery". Evidence was given by several witnesses of a raid by a party of police officers on the premises in which the accused were found and of the seizure of some articles and a large number of documents. An expert witness gave evidence relating to the documentary exhibits. At the close of the case for the prosecution counsel for the defence submitted that the accused had no case to answer on the grounds: (i) the expert witness had failed to explain fully the documentary exhibits, and (ii) the so called "characters lottery" was not a lottery. The learned Magistrate agreed with both these submissions and the accused were accordingly acquitted and discharged. Subsequently, on the application of the Deputy Public Prosecutor, the learned Magistrate stated this case, the question for the opinion of the Court being whether the said determination was correct in point of law.

Held: (1) it is an essential characteristic of a lottery that there should be a common element among the participants, a nexus or link which makes them participants in the same game, method or device. No game, method or device which does not have a common element among the participants can be a lottery. This essential characteristic of a common element amongst the participants was missing in the case of the so called "characters lottery" and therefore it was not a lottery within the meaning of the Common Gaming Houses Ordinance;

(2) in view of the conclusion which had been reached that the transaction in question was not a lottery it was unnecessary in this case to consider the effect of the evidence of the expert witness;

(3) the determination of the learned Magistrate was correct in point of law and should be affirmed.

Cases referred to:—

(1) *Public Prosecutor v. Lau Ting Kai* (1955) M.L.J. 206.

(2) *Lim Seah Pong v. Public Prosecutor* (1957) M.L.J. 5.

CASE STATED.

A. V. Winslow (Solicitor General) for the Crown.

L. Rayner amicus curiae

Cur. Adv. Vult.

Tan Ah Tah J.: — This is a case stated by a Magistrate under the provisions of section 306 of the Criminal Procedure Code.

The accused were charged under section 4(c) of the Common Gaming Houses Ordinance (Cap. 114) in that they assisted in the carrying on of a public lottery, to wit, the "characters lottery." Evidence was given by several witnesses of a raid by a party of police officers on the premises in which the accused were found and of the seizure of some articles and a large number of documents. An expert witness also gave evidence relating to the documentary exhibits. At the close of the case for the prosecution counsel for the defence submitted that the accused had no case to answer on the grounds, first, that the expert witness had failed to explain fully the documentary exhibits and secondly, that the so-called "characters lottery" is not a lottery. The learned Magistrate agreed with both these submissions and the accused were accordingly acquitted and discharged. In these circumstances the question for the opinion of this Court is whether this determination was correct in point of law.

It is convenient to deal first with the question whether the so-called "characters lottery" is a lottery within the meaning of the Common Gaming Houses Ordinance. It was described and its *modus operandi* was explained by the expert witness in the following words:—

"The Characters Lottery is of 3 types —
100, 1,000 and 10,000 number lotteries.

In the case of the 100 number it starts with 01, 02 till 99 & 00. The winning number must correspond with the last two digits of the winning number drawing the first prize of a big sweep conducted by a Turf Club in the Federation or Singapore. The odds are between 70 to 80 to 1.

In the case of the 1,000 and 10,000 number lotteries the principles are the same. The last 3 digits and 4 digits respectively are used.

The odds in the case of the 1,000 number lottery vary between 650 to 700 to 1. In the case of the 10,000 number lottery there are 2 types of betting. There is the small and big 10,000 number lottery. In the case of the small 10,000 lottery the cost of a ticket is $1. Three prizes are offered:

1st Prize	$3,000
2nd Prize	$2,000
3rd Prize	$1,000.

In the case of the big 10,000 number lottery the cost of a ticket is $2.50. Five prizes are offered:

1st Prize	$4,000
2nd Prize	$2,000
3rd Prize	$1,000
Starters	$500 each
Consolation	$150 each.

Anyone who wishes to stake will write down the number on a piece of paper together with the number of tickets. This piece of paper is called a staking slip. This staking slip will be handed over to a Collector either by

the person himself or through a runner. Bets are also accepted by telephone. When a staker hands a staking slip to a Collector, the Collector will enter up the number together with the number of tickets on a pad in duplicate. The staker will get a copy. The Collector will retain the other. When bets are closed the Collector will prepare a Record of Stakes from the total number of staking slips. In some cases he will hand these records of stakes to a promoter who will then prepare a master schedule which will enable him to see which number or numbers are most heavily backed. These numbers are known as 'bad numbers' and he will lay off these bets on other promoters. Bets are accepted a day before and on the actual day of the race meeting but in some cases it is known that they receive bets even 2 or 3 days before the race meeting. Rebates are given by different collectors and promoters ranging from 10% to 30%. Instead of a $1 on a ticket stakers pay 80 to 90 cts. and in case of the $2.50 ticket stakers pay $1.80 or $2.00 or $2.20. In some cases the entries are camouflaged by relating the entries to sale of goods, etc. In some cases the date of the race meeting is entered on the staking slip and in some cases it is not. Different promoters use different codes. For "big" they may put 'above' and for small 'below' in Chinese. Some use circles and triangles and some use rectangles. In this case the 'T' printed on pads represents the small 10,000 lottery. 'K' represents bets on cash sweep. The word 'big' in Chinese characters represents the big 10,000 number lottery. Promoters do not declare the winning number. The results of these character lotteries depend on the draw of a big sweep. Big sweep results appear in the Press the day following the draw."

The question whether such a scheme as that described by the expert witness is a lottery has given rise to a difference of judicial opinion in the Federation of Malaya. In *Public Prosecutor v. Lau Ting Kai*[1] Wilson J. held that the so-called "characters lottery," which was described as "tikam ekor" in that case, was not a lottery. On the other hand, in *Lim Seah Pong v. Public Prosecutor*[2] Thomson J. (as he then was) held that a similar transaction which was being carried out by the appellant in that case was a lottery. In view of this difference of judicial opinion in the Federation of Malaya I will proceed to state my own views on the question and the conclusion which I have reached. I may add that in deciding this case I have derived much assistance from the careful and elaborate grounds of decision of the learned Magistrate.

The Common Gaming Houses Ordinance defines a lottery as follows :—

"'Lottery' includes any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed within or without the Colony."

This definition in my opinion connotes a number of participants taking part in the game, method or device whereby money or money's worth is distributed or allotted in the manner described. It is unnecessary in the present case to determine the minimum number of participants that will be required to make the transaction a lottery.

Now it is clear from the evidence of the expert witness that the odds in the case of the so-called "character lottery" are fixed. The first participant who lays a wager with the promoter knows the amount of money he will win if he is successful. At this stage it should be noted that even though no other person lays a wager with the promoter, the transaction between the first participant and the promoter remains effective and will result in the first participant winning his wager if he has chosen the correct digits.

Let it be assumed, however, that a second participant lays another wager with the promoter. It becomes necessary then to consider what effect, if any, this second wager has upon the first wager. If the second participant has chosen the same digits as the first participant and both of them have made the correct choice, each of them will clearly win the same amount of money. This is of course due to the fact that the odds are fixed. It is therefore clear that the second participant's wager does not in any way affect that of the first participant. Each of the two participants is in fact laying a separate wager with the promoter and nothing that either of them does will in any way influence or affect the chances of the other. What is most important from their point of view is the choice of the correct digits; so long as they have made the right choice it does not matter to them whether a hundred other persons choose the same digits. Whoever chooses the correct digits will win exactly the same amount of money.

It is clear from the foregoing that what the promoter is doing is to lay a number of separate wagers with different individuals; in short, each participant lays a separate wager with the promoter and each transaction is in effect an isolated transaction unaffected in any way by any other transaction. The result is the same whether or not another participant enters into a similar transaction.

In my opinion it is an essential characteristic of a lottery that there should be a common element among the participants, a nexus or link which makes them participants in the same game, method or device. Lotteries of course take many forms and it may well be impossible to give a general description which will cover every possible form of lottery. However, in my opinion, no game, method or device which does not have a common element among the participants can be a lottery.

This essential characteristic of a common element among the participants is missing in the case of the so-called "characters lottery" and therefore, in my judgment, it is not a lottery within the meaning of the Common Gaming Houses Ordinance. It follows that in the opinion of this Court the determination of the learned Magistrate was correct in point of law and should be affirmed.

The point concerning the adequacy or inadequacy of the evidence of the expert witness can be dealt with more shortly. The object of calling the expert witness was to prove by his evidence that most of the documentary exhibits were used for the purpose of carrying on a public lottery. In view of the conclusion which has been reached that the transaction in question was not a lottery it appears to be unnecessary in this case to consider the effect of the evidence of the expert witness.

I have not referred in greater detail to the two cases which were decided in the Federation of Malaya and which I mentioned earlier, not because of any lack of respect for the learned Judges who heard those cases, but because the question of the common element among the participants in a lottery does not appear to have been raised in those cases. The judgment in *Lim Seah Pong v. Public Prosecutor*[2], *supra,* contains, if I may say so with respect, a penetrating analysis of various aspects of a lottery, but, so far as I can see, the question of a common element was not among the matters dealt with by the learned Judge. The reason for this must be that the point was not specifically raised by counsel appearing in the case.

I cannot end this judgment without expressing my appreciation of the assistance rendered to the Court by Mr. Winslow, who appeared for the Crown, and by Mr. Rayner, who appeared as *amicus curiae.*

Case answered. Determination of the Magistrate affirmed.

MOHAMED DIN BIN ALI v. THE TRUSTEES OF THE NEGRI SEMBILAN SCHOLARSHIP FUND FOR HIGHER EDUCATION & TRAINING OF MALAYS

[A. C. J. (Smith J.) June 26, 1957]

[K. L. — Civil Appeal No. 35 of 1956]

Contract — Undisclosed principal — Estoppel by judgment — Civil Procedure Code (Cap. 7), s. 362

The appellant in this case went to the United Kingdom on a Negri Sembilan State Scholarship. In December 1952 he applied for a loan of £100 through the Director of Colonial Studies in London. This application was sent to the Federal Government, who referred it to the State Government, which in turn referred the application to the respondents who are the trustees who administer the Scholarship Fund. The respondents sanctioned the loan before payment. The appellant signed a receipt acknowledging receipt from the Negri Sembilan Government. In 1954 the State Government took action in its own name to recover the loan but this suit was withdrawn when it was discovered that the money lent was in fact the property of the respondents. Subsequently the respondents brought the action against the appellant. The Magistrate gave judgment for the respondents.

Held: (1) the respondents were undisclosed principles and as such were fully entitled to sue the appellant;

(2) the respondents were not estopped by the previous proceedings brought by the State Government from bringing the action.

CIVIL APPEAL.

Lall Singh Muker for the appellant.

P. Hall for the respondents.

Smith J. : — The facts of this case are not in dispute but the interpretation of them is. The defendant went to the United Kingdom on a State Scholarship. State scholarships for the higher training of Malays in the Negri Sembilan are financed from the scholarship fund established under the Negri Sembilan Scholarship Enactment (Enactment No. 3 of 1949). The fund is maintained by an annual and automatic appropriation from the general revenues of the State.

I am satisfied that the finding of facts as set out by the learned Magistrate in his grounds of judgment are supported by the evidence and I accept his finding.

The defendant, having been put to great expense by a serious accident to his wife, borrowed £100 in December 1952 through the Director of Colonial Studies in London. The application for the loan was sent by the Secretary of State for the Colonies to the